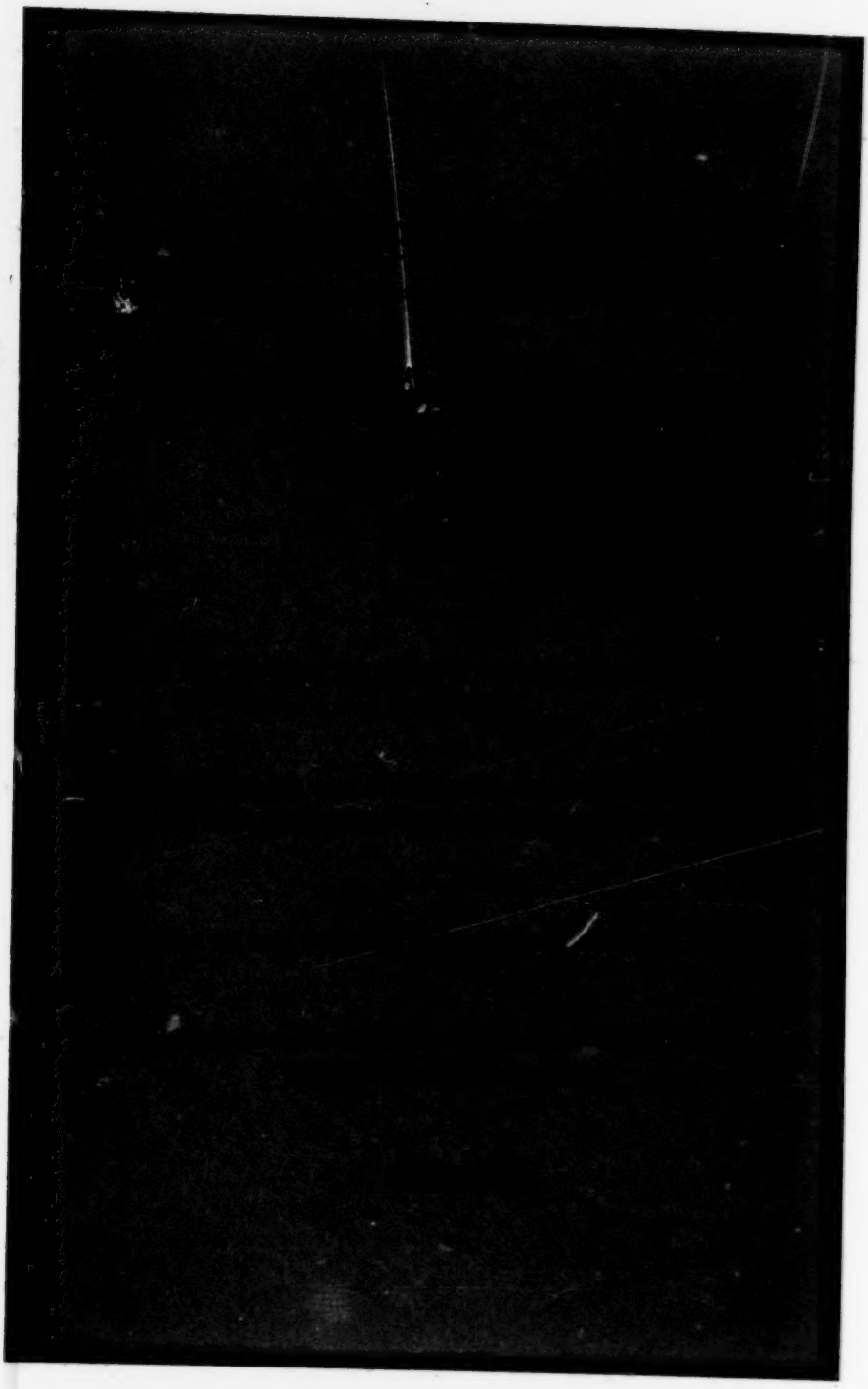

(24,414)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 670.

LONG SAULT DEVELOPMENT COMPANY, PLAINTIFF IN ERROR,

vs.

HOMER D. CALL (AS SUCCESSOR OF JOHN J. KENNEDY), AS TREASURER OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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1 Supreme Court of the United States.

In the Matter of the Application of the LONG SAULT DEVELOPMENT COMPANY for a Writ of Mandamus, Plaintiff in Error,
against
HOMER D. CALL, Successor of John J. Kennedy, as Treasurer of the State of New York, Defendant in Error.

Petition for Writ of Error.

To the Honorable Justices of the Supreme Court of the United States:

Now comes the Long Sault Development Company, applicant above named and plaintiff in error, by its attorneys, Cadwalader, Wickersham & Taft, and respectfully presents:

1. On the 10th day of June, 1914, the Court of Appeals of the State of New York made and entered a final order and judgment in the above matter affirming with costs an order of the Appellate Division of the Supreme Court, denying the application of the said Long Sault Development Company for a writ of mandamus to compel the Treasurer of the State of New York to accept payment from said corporation of the sum of $25,000 as the sum payable from said corporation to the State of New York for the year 1912, under the provisions of Chapter 355 of the Laws of 1907, of said State. Thereafter, and on the 27th day of June, 1914, the records and proceedings in said suit having been remitted to the Supreme Court of the State of New York in and for the County of Albany, said final order and judgment of the Court of Appeals were made and entered as the final order and judgment of said Supreme Court of the State of New York.

2 By order of the Court of Appeals dated the 14th day of July, 1914, the said remittitur of that court to the Supreme Court of the State of New York was amended by adding thereto a statement that upon the argument of the appeal before said Court of Appeals the said applicant had submitted a brief in its behalf containing certain points set forth at large in said order and which points draw in question certain rights, privileges and immunities claimed by the plaintiff in error under the Constitution of the United States. Thereafter, and on the 19th day of August, 1914, the aforesaid final order and judgment of the Court of Appeals as amended by the order of said Court dated July 14, 1914, were made and entered as the final order and judgment of the Supreme Court of the State of New York.

The said final order and judgment set forth that Homer D. Call has succeeded John J. Kennedy as Treasurer of the State of New York, against whom as such Treasurer the proceeding herein was instituted, and upon motion of the Attorney General of the State of New York as attorney for said Homer D. Call as Treasurer the said final order and judgment were made and entered. Judgment

for costs herein was entered in favor of Homer D. Call as Treasurer of the State of New York.

A printed copy of the record in said Court of Appeals, together with copies of the aforesaid remittitur and amended remittitur, bill of costs and final orders and judgments herein in the Supreme Court of the State of New York, constituting the complete record in this cause in the said Court of Appeals and in said Supreme Court subsequent to entry of final order and judgment in the Court of Appeals, are herewith submitted and filed, marked "Exhibit A", all of said papers being duly certified as correct copies by the Clerk of
3 the Supreme Court of New York for the County of Albany, in whose office the originals of said papers are duly filed in accordance with law.

Duly certified and authenticated copies of the opinion of the Court of Appeals in this cause and of the dissenting opinion filed therein are herewith submitted and filed, marked "Exhibit B."

2. In the said final order and judgment and the proceedings had prior thereto in this suit certain errors were committed to the prejudice of said plaintiff in error, all of which will more in detail appear from the assignment of errors which is hereto annexed and is filed with this petition.

3. The said Court of Appeals of the State of New York is the highest court of the State of New York in which a decision in this suit could be had.

4. There was drawn in question in said suit the validity of Chapters 452 and 453 of the Laws of 1913 of the State of New York, purporting to repeal Chapter 355 of the Laws of 1907 of said State, being the special statute creating the said Long Sault Development Company, the plaintiff in error above named, on the ground that said Chapters 452 and 453 of the Laws of 1913 were repugnant to the Constitution of the United States and the decision of said suit was in effect in favor of the validity of said statutes.

Certain rights, privileges and immunities were especially claimed by said plaintiff in error in said suit under the Constitution of the United States, to wit: that said Chapter 355 of the Laws of 1907 constituted a contract between the State of New York and said Long Sault Development Company, which was protected from impairment by the provisions of Article I, Section 10, Subdivi-
4 sion I of the Constitution; that property rights had been acquired by plaintiff in error under and by virtue of said statute and were secured to it by the provisions of the Fourteenth Amendment to the Constitution, and that said Chapter 452 of the Laws of 1913, and all acts of the legislative, executive and judicial departments of the government of the State of New York, which said final order and judgment affirmed or made effective, impaired the obligation of said contract and deprived the plaintiff in error of property without due process of law; and that in such and other respects said decision was against the rights, privileges and immunities claimed as aforesaid by the plaintiff in error.

Wherefore, the said plaintiff in error prays for the allowance of a writ of error and for such other and further orders and process as may cause the records and proceedings aforesaid, with all things

concerning the same, to be sent to the Supreme Court of the United States; that upon final hearing hereof the said judgment be re-examined and reversed and that the said errors be corrected, and such other and further proceedings be ordered and had as according to law should be done.

LONG SAULT DEVELOPMENT COMPANY,
By ARTHUR V. DAVIS, *President.*
CADWALADER, WICKERSHAM & TAFT,
Attorneys for Applicant, Plaintiff in Error.

Office and Post Office Address: 40 Wall Street, Borough of Manhattan, New York City.

HENRY W. TAFT,
Of Counsel.

5 STATE OF NEW YORK,
County of New York, ss:

Arthur V. Davis, being duly sworn, deposes and says: That he is president of the Long Sault Development Company, the petitioner herein and plaintiff in error above named; that he has read the foregoing petition subscribed by him as such President, and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; that the reason why this verification is not made by petitioner is that said petitioner is a corporation and that deponent is an officer and agent of said corporation, familiar with the matters referred to therein and personally has had charge thereof in behalf of said petitioner.

ARTHUR V. DAVIS.

Sworn to before me this 19th day of September, 1914.

[Seal Edward J. Ablitzer, Notary Public, Kings County.]

EDWARD J. ABLITZER,
Notary Public, Kings County, No. 22.

Certificate filed in New York County No. 15, New York County Registers No. 5059.

6 Supreme Court of the United States.

In the Matter of the Application of LONG SAULT DEVELOPMENT COMPANY, for a Writ of Mandamus, Plaintiff in Error,
against
HOMER D. CALL, Successor of John J. Kennedy, as Treasurer of the State of New York, Defendant in Error.

Assignment of Errors.

To the Honorable Justices of the Supreme Court of the United States:

Now comes Long Sault Development Company, the above named plaintiff in error, and in connection with the petition for a writ of error filed herewith says:

That in the record and proceedings in this cause and in the final order and judgment made and entered in the Court of Appeals of the State of New York on the 10th day of June, 1914, and amended by order of said court dated July 14, 1914, and in the final order and judgment made and entered in the Supreme Court of the State of New York on the amended remittitur from said Court of Appeals of the State of New York on the 19th day of August, 1914, there is manifest error in this, to wit:

1. The said courts erred in holding and deciding in effect that Chapter 452 of the Laws of 1913 of the State of New York was a valid exercise of the legislative power and was neither repugnant to Article I, Section 10, Subdivision 1, of the Constitution of the United States nor to Section I of the Fourteenth Amendment to said Constitution.

7 2. The said courts erred in holding and deciding that Chapter 355 of the Laws of 1907 of the State of New York was unconstitutional and void, and did not constitute a contract between the State of New York and the Long Sault Development Company, the plaintiff in error above named.

3. The said courts erred in holding and deciding that the grant of powers to said Long Sault Development Company, provided for in said Chapter 355 of the Laws of 1907, was beyond the constitutional power of the State to make within the principle laid down in Illinois Central Railroad Company v. Illinois, 146 U. S., 387, and that said Chapter 355 of the Laws of 1907 was therefore unconstitutional and void.

4. The said courts erred in holding and deciding that said Long Sault Development Company acquired no property rights by virtue of the provisions of said Chapter 355 of the Laws of 1907.

5. The said courts erred in holding and deciding that said Long Sault Development Company was not entitled to a writ of mandamus requiring the Treasurer of the State of New York to receive from said Long Sault Development Company the sum of $25,000 as a payment due to the State of New York from said corporation

for the year 1912 under the provisions of said Chapter 355 of the Laws of 1907.

6. The said courts erred in holding and deciding that said Long Sault Development Company and its successors or assigns were not entitled to the relief prayed for in the petition of said corporation presented to the Supreme Court of the State of New York in the above cause.

7. The said courts erred in refusing to decide and hold that Chapter 355 of the Laws of 1907 of the State of New York constituted a contract between said State and said Long Sault
8 Development Company, and in refusing to decide and hold that Chapter 452 of the Laws of 1913 of said State was repugnant to the Constitution of the United States, in that it impaired the obligation of said contract within the meaning of Article I, Section 10, Subdivision 1, of the Constitution of the United States.

8. The said courts erred in refusing to hold and decide that the decision of the Appellate Division for the Third Department of the Supreme Court of the State of New York, denying the application for the writ of mandamus prayed for in this cause on the ground that said Chapter 355 of the Laws of 1907 was repealed by Chapter 452 of the Laws of 1913 and that Chapter 453 of the Laws of 1913 was a valid exercise of the power of eminent domain; was repugnant to Article I, Section 10, Subdivision 1, of the Constitution of the United States, and to Section 1 of the Fourteenth Amendment to said Constitution.

9. The said courts erred in refusing to hold that the act of the Treasurer of the State of New York in refusing to receive the aforesaid sum of $25,000 from the said Long Sault Development Company on the ground that Chapter 355 of the Laws of 1907 was unconstitutional and void being sustained by the courts of the State of New York deprived the said corporation of property without due process of law, within the meaning and prohibition of the Fourteenth Amendment to the Constitution.

10. The said courts erred in refusing to hold that the action taken by the legislative and executive branches of the government of the State of New York, as appearing in the record in this cause based upon the claim and assertion that Chapter 355 of the Laws of 1907 was beyond the power of the State to en-
9 act and was unconstitutional and void, being sustained by the courts of said State deprived the said corporation of property without due process of law, within the meaning and prohibition of the Fourteenth Amendment to the Constitution.

11. The said courts erred in refusing to hold that the action taken by the legislative and executive departments of the government of the State of New York, appearing in the record in this cause, and being sustained by the courts of said State in the manner in said record appearing, constitute an impairment of the obligation of the contract created by Chapter 355 of the Laws of 1907 within the meaning and prohibition of Article I, Section 10, Subdivision 1, of the Constitution of the United States.

12. The said courts erred in refusing to hold that said Chapter

355 of the Laws of 1907 constituted a contract between the State of New York and said Long Sault Development Company which was within the protection of Article 1, Section 10, Subdivision 1, of the Constitution of the United States, and that said corporation had acquired property rights by virtue of the provisions of said statute which were within the protection of the Fourteenth Amendment to said Constitution, and in holding and deciding because of said errors that said Long Sault Development Company was not entitled to the writ of mandamus applied for in said cause, and that the application therefor should be denied with costs against said applicant and plaintiff in error; and the said courts erred in deciding against the rights, privileges and immunities specially set up and claimed by said Long Sault Development Company under the Constitution of the United States and in these assignments of error hereinbefore more particularly specified.

10 Wherefore, said Long Sault Development Company, plaintiff in error, prays that the judgment of the Supreme Court of the State of New York entered in the office of the Clerk of Albany County on the 19th day of August, 1914, pursuant to the amended remittitur of said Court of Appeals of the State of New York, be reversed, and that judgment be rendered herein in favor of the plaintiff in error, and for the relief prayed for in the petition of said Long Sault Development Company, as the same appears in the record herein, and that such other and further relief be granted to the plaintiff in error, as shall be in accordance with law and the statutes of the United States in such case made and provided.

CADWALADER, WICKERSHAM & TAFT,
Attorneys for Applicant and Plaintiff in Error.

HENRY W. TAFT,
Of Counsel.

11 [Endorsed:] United States Supreme Court. In the Matter of the Application of Long Sault Development Company for a writ of Mandamus, Plaintiff in Error, against Homer D. Call, successor of John J. Kennedy as Treasurer of the State of New York. Petition for Writ and Assignment of Errors. Cadwalader Wickersham & Taft Attorneys for Applicant and Plaintiff in Error, No. 40 Wall Street, New York City. The writ of error as prayed for in the within petition is hereby allowed and the bond is fixed at the sum of $500. Dated, October 5, 1914. Mahlon Pitney Associate Justice Supreme Court of the United States. Copy of within petition for writ and assignment of errors is received Dated Albany, N. Y., Oct. 14, 1914. James A. Parsons, Attorney General.

12 Supreme Court of the United States.

In the Matter of the Application of the LONG SAULT DEVELOPMENT COMPANY for a Writ of Mandamus, Plaintiff,

vs.

HOMER D. CALL, Successor of John J. Kennedy, as Treasurer of the State of New York, Defendant.

Stipulation.

Whereas Exhibit "A" referred to in the petition for the writ of error in this cause, is a copy of the complete record herein in the Supreme Court of the State of New York, Albany County, with the exception of the bond on the writ of error, and whereas said record is a part of the record on the writ of error to the Supreme Court of the United States;

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that, for purposes of brevity and to avoid redundancy in the record on the writ of error herein, Exhibit "A," referred to in the petition for the writ of error in this cause, be omitted.

Dated, October 14, 1914.

CADWALADER, WICKERSHAM & TAFT,
Attorneys for Plaintiff in Error.

JAMES A. PARSONS,
Attorney-General of the State of New York,
Attorney for Defendant in Error.

13 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of New York on a remittitur from the Court of Appeals of the State of New York, being the highest court of law or equity of the said State in which a decision can be had before you or some of you, between Long Sault Development Company, applicant-appellant, and John J. Kennedy, succeeded by Homer D. Call as Treasurer of the State of New York, respondent, wherein was drawn in question the validity of a statute of, or an authority exercised under the State of New York, on the ground of their being repugnant to the constitution of the United States, and the decision was in favor of their validity, and wherein was drawn in question the construction of clauses of the Constitution of the United States, and the decision was against the title, right, privilege and immunity especially set up and claimed under such clauses of said Constitution; a manifest error hath happened to the great damage of the said Long Sault Development Company as by the petition of said

corporation appears. We being willing that error, if any hath been, should be fully corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly you send the record and proceedings aforesaid, with all things
14 concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington in the District of Columbia within thirty days from the date hereof in the said Supreme Court; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this fifth day of October, in the year of our Lord One Thousand nine hundred and fourteen.

[Seal of the Supreme Court of the United States.]

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by

MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

Dated, October 5, 1914.

15 [Endorsed:] United States Supreme Court. In the Matter of the Application of Long Sault Development Company for a writ of Mandamus, Plaintiff in Error, against Homer D. Call, successor of John J. Kennedy, as Treasurer of the State of New York. Writ of Error. Cadwalader Wickersham & Taft, Attorneys for Plaintiff in Error, No. 40 Wall Street, New York City. Received, October 14, 1914. Wm. J. Grattan, Clerk of the Supreme Court. Copy of within writ of error received this 14th day of October, 1914. James A. Parsons, Att'y General of State of New York; Att'y for Def't in error.

16 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Homer D. Call, as Treasurer of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office in the Supreme Court of the State of New York, wherein Long Sault Development Company is plaintiff in error and you, as successor of John J. Kennedy as Treasurer of the State of New York, are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be reexamined, re-

versed and corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, this fifth day of October, in the year of our Lord One thousand nine hundred and fourteen.

MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

Service of a copy of the foregoing citation on writ of error is hereby admitted, this 14th day of October, 1914.

JAMES A. PARSONS,
Attorney General of State of New York, Attorney for Defendant in Error.

17 [Endorsed:] United States Supreme Court. In the Matter of the Application of Long Sault Development Company for a writ of Mandamus, Plaintiff in Error, against Homer D. Call, successor of John J. Kennedy, as Treasurer of the State of New York. Original. Citation on Writ of Error. Cadwalader Wickersham & Taft, Attorneys for Plaintiff in Error, No. 40 Wall Street, New York City. Received, October 14, 1914. Wm. J. Grattan, Clerk of the Supreme Court.

18 Court of Appeals.

On Appeal from Appellate Division, Third Department.

In the Matter of the Application of the LONG SAULT DEVELOPMENT COMPANY for a Writ of Mandamus
against
JOHN J. KENNEDY, as Treasurer of the State of New York.

Papers on Appeal from Order Affirming an Order Denying Application for Writ of Mandamus.

Strong & Cadwalader, Attorneys for Appellant, No. 40 Wall Street. Borough of Manhattan, New York City.

Hon. Thomas Carmody, Attorney-General, appearing for John J. Kennedy, as Treasurer of the State of New York, Respondent. Capitol, Albany, N. Y.

19 *Notice of Appeal.*

Supreme Court, Albany County.

In the Matter of the Application of the LONG SAULT DEVELOPMENT COMPANY for a Writ of Mandamus
against
JOHN J. KENNEDY, as Treasurer of the State of New York.

Please take notice that the applicant, Long Sault Development Company, appeals to the Appellate Division of the Supreme Court, Third Department, from the order entered herein in the office of the Clerk of the County of Albany, on the 20th day of February, 1913, denying the prayer of the petition of said Long Sault Development Company, for a Writ of Mandamus herein, and from each and every part of said order.

Dated New York, February 20th, 1913.

STRONG & CADWALADER,
Attorneys for Applicant, Long Sault Development Co.

Office and P. O. Address, 40 Wall Street, Borough of Manhattan, New York City.

To Hon. Thomas Carmody, Attorney-General, Appearing for John J. Kennedy, as Treasurer of the State of New York.
William J. Grattan, Esq., Clerk.

20 *Order Appealed From.*

At a Special Term of the Supreme Court Held in and for the County of Columbia at the Court House in Hudson, N. Y., on the 15th day of February, 1913.

Present: Hon. A. V. S. Cochrane, Justice.

In the Matter of the Application of the LONG SAULT DEVELOPMENT COMPANY for a Writ of Mandamus
against
JOHN J. KENNEDY, as Treasurer of the State of New York.

An order to show cause, dated February 10, 1913, having been made herein by the Hon. A. V. S. Cochrane, Justice, directing the above named John J. Kennedy, as Treasurer of the State of New York to show cause at a Special Term of this Court to be held on the 15th day of February, 1913, why a writ of mandamus, peremptory or alternative as to the Court might seem proper, should not issue out of and under the seal of this Court, directed to the above named John J. Kennedy, as Treasurer of the State of New York, requiring the said State Treasurer to receive and accept from the Long Sault Development Company as a payment into the Treasury of the State

of New York, the sum of $25,000 as the sum due and payable by said Long Sault Development Company to the State of New York for the year 1912, under the provisions of Chapter 355 of the Laws of 1907 of said State, and why such other and further relief should not be accorded in the premises as might be just, and said order to show cause having duly come on to be heard, and Strong
21 & Cadwalader having appeared in support of the petition, on which said order to show cause was made, and the Hon. Thomas Carmody, Attorney-General of the State of New York, having appeared in opposition thereto, now on reading and filing the said order to show cause, dated February 10, 1913, and the petition of the Long Sault Development Company, verified February 8th, 1913, together with the exhibits therein referred to and thereto annexed, and the affidavits of John C. Crapser and Charles H. Wolfe, verified respectively the 7th day of February and the 8th day of February, 1913, upon which said order to show cause was granted, and the opposing affidavit of George W. Batten, verified the 15th day of February, 1913, and after hearing Henry W. Taft, Esq., of counsel for the petitioner, in support of said application and Henry Selden Bacon, Esq., of counsel for said State Treasurer, in opposition there, on motion of Hon. Thomas Carmody, Attorney-General, it is

Ordered that the prayer of said petitioner of the Long Sault Development Company he and the same hereby is denied, as a matter of right, not as a result of the exercise of the Court's discretion.

This order is not made after a consideration of the merits, but for the purpose of expediting a final decision upon the merits in the courts of appellate jurisdiction to which appeals herein may be prosecuted.

A. V. S. COCHRANE,
Justice of the Supreme Court.

Entered in Albany County.

Approved as to form.
THOMAS CARMODY,
Attorney-General.
STRONG & CADWALADER,
Attorneys for Petitioner.

22 *Order to Show Cause, Read in Support of the Motion.*

Supreme Court of New York, Albany County.

In the Matter of the Application of the LONG SAULT DEVELOPMENT COMPANY for a Writ of Mandamus
against
JOHN J. KENNEDY, as Treasurer of the State of New York.

Upon the annexed petition of Long Sault Development Company, verified the 8th day of February, 1913, and the annexed affidavits

of John C. Crapser and Charles H. Wolfe, verified respectively the 7th day of February and the 8th day of February, 1913, and on motion of Strong & Cadwalader, attorneys for petitioner.

Let the above named John J. Kennedy, as Treasurer of the State of New York, show cause at a Special Term of this Court, to be held in and for the County of Columbia, at the Court House in Hudson, New York, on the 15th day of February, 1913, at two o'clock P. M. of that day, or as soon thereafter as counsel can be heard, why a writ of mandamus, peremptory or alternative as to the Court may seem proper, should not issue out of and under the seal of this Court, directed to the above named John J. Kennedy, as Treasurer of the State of New York, requiring the said State Treasurer
23 to receive and accept from the Long Sault Development Company, as a payment into the Treasury of the State of New York, the sum of $25,000, as the sum due and payable by said Long Sault Development Company to the State of New York, for the year 1912, under the provisions of Chapter 356 of the Laws of 1907 of said State, and why such other and further relief should not be accorded in the premises as may be just; and

Let service of this order of less than eight days to wit, on or before the 11th day of February, 1913, be deemed sufficient, cause therefor appearing in said petition annexed.

Dated, Albany, February 10th, 1913.

A. V. S. COCHRANE,
Justice of the Supreme Court.

24 *Petition Read in Support of the Motion.*

Supreme Court of New York, Albany County.

In the Matter of the Application of the LONG SAULT DEVELOPMENT COMPANY for a Writ of Mandamus
against
JOHN J. KENNEDY, as Treasurer of the State of New York.

To the Supreme Court of the State of New York:

The petition of Long Sault Development Company respectfully shows:

First. Your petitioner is a domestic corporation organized and existing under and by virtue of a special act of the Legislature of the State of New York, being Chapter 355 of the Laws of 1907, entitled "An Act to incorporate the Long Sault Development Company, and to authorize said Company to construct and maintain dams, canals, power houses and locks at or near Long Sault Island for the purpose of improving the navigation of the St. Lawrence River, developing power from the waters thereof, and to construct and maintain a bridge and carry on the manufacture of commodities."

The said Act was passed by a two-thirds vote of the members of each branch of the Legislature and became a law May 23rd, 1907,

with the approval of the Governor, Honorable Charles E. Hughes. A copy of said Act is hereto annexed, marked Exhibit A, and is made a part of this petition. It will be hereinafter sometimes referred to as the Special Act.

25 Second. Your petitioner has been duly organized, has complied with all the provisions of Section 7 of said Act and is now acting as a corporation thereunder. It has begun business and prior to doing so, $250,000 par value of its capital stock had been actually subscribed and paid for in cash. The organization tax provided for by the general laws of the State of New York has been duly paid to the State Treasurer as required by said Special Act, and all other taxes payable by said corporation from time to time and due prior to the date of this petition under any general law of said State, have been duly paid. Under the provisions of Section 4 of said Special Act, your petitioner was required to pay into the Treasury of the State of New York the sum of $15,000 for the year 1910, and the sum of $20,000 for the year 1911, both of which sums have been duly paid, pursuant to the provisions of said Act. The said Special Act in Section 4 thereof, further provides, that for each year after 1911, your petitioner shall pay at certain rates therein specifically set forth, upon the average amount of electrical horsepower or mechanical horsepower generated or developed during each year under authority of said Act, and that, if for any such year the amount payable at the rates fixed as aforesaid, in less than $25,000, then your petitioner shall pay for such year the sum of $25,000 instead of the amount that would be payable at the rates aforesaid. On account of the fact, more fully referred to below, that the dams, locks, canals, and other works authorized by said Special Act, have never been commenced and there has never been generated or developed any electrical or mechanical horse-power whatsoever, there became due from your petitioner, pursuant to the provisions of said Act, and payable into the Treasury of the State, on or before the first day of February, 1913, the sum of $25,000 for the year ending December 31st, 1912. On or about the 21st day of January, 1913, as will more fully appear in the affidavit of Charles H. Wolfe, hereto attached, there was delivered to Hon. John J. Kennedy, Treasurer of the State of New York, at his office in the City of Albany, a letter dated Janu-

26 ary 21st, 1913, a copy of which is hereto annexed, marked Exhibit B, and is made part of this petition. A copy of the statement therein referred to is also attached marked Exhibit C, and is made a part of this petition. Said statement was duly verified by Arthur V. Davis, whose signature is thereto attached, on or about January 21, 1913. A similar verified statement was sent to John A. Bensel, the State Engineer and Surveyor, of the State of New York, on or about January 21st, 1913, and your petitioner received an acknowledgment thereof from Arnold G. Chapman, Deputy State Engineer, by letter dated January 22nd, 1913, a copy of which is hereto attached, marked Exhibit D, and the same is made a part of this petition.

The Cashier's check of the National Bank of Commerce, of the

City of New York, for $25,000, was delivered to the said State Treasurer, as stated in said letter to him from your petitioner, dated January 21, 1913, in payment of the amount due to the State by your petitioner under Chapter 355 of the Laws of 1907, for the year ending December 31st, 1912; but on or about the 22nd day of January, 1913, the said State Treasurer returned the said check to your petitioner by mail, together with the papers enclosed in the letter above referred to, and sent to your petitioner a letter, a copy of which is hereto attached, marked Exhibit E, and is made a part of this petition. Thereupon, and on or about the 27th day of January, 1913, your petitioner caused to be again tendered to the said State Treasurer the said sum of $25,000 in legal tender United States currency, but he again refused to receive said payment, on the ground that he had been advised by the Attorney General of the State of New York that the Act incorporating your petitioner was unconstitutional, all of which appears more fully in the aforesaid affidavit of Charles H. Wolfe. A copy of the letter from your petitioner, which was left with the State Treasurer at the time of the said tender, is hereto attached, marked Exhibit F, and is
27 made a part of this petition. The verified statement therein referred to is hereto attached marked Exhibit F-1.

Third. Your petitioner, with a view to carrying out the purposes for which it was organized, as above set forth, has employed the most competent engineers available for the character of the work contemplated by said Special Act, who made careful surveys, drawings and estimates and devised and developed a complete plan for the construction of the works authorized by said Act. In developing this plan your petitioner has co-operated with the St. Lawrence Development Company, Limited, a Canadian corporation owning the power development at the foot of Sheek Island near Mille Roches, Ontario, which has made application to the proper Canadian governmental authorities for permission to construct within the Province of Ontario, dams, locks, canals and works to connect in the St. Lawrence River at the International Boundary Line with the dams and structures of your petitioner, so that together there shall be constructed a single comprehensive and complete system of water power development which will be of the character authorized by said Special Act. The dams, canals and power houses contemplated by such system are shown on a plan hereto annexed, marked Exhibit G, and made part of this petition, which is a reduced copy of a plan prepared under the supervision of your petitioner's engineers. It is the intention of your petitioner in conjunction with said Canadian corporation, to construct the dams, locks, power houses and other works substantially upon the locations as indicated upon said plan provided and as soon as all necessary authority and consent to the construction and maintenance thereof may be obtained from the governments of the United States and of the Dominion of Canada, and of the Province of Ontario in said Dominion.

A general description of said works as contemplated, of the location and character thereof, and the effect thereof upon the naviga-

tion of the river and the interests of the public therein, and
28 the steps which have already been taken by your petitioner in reliance upon the grant made to it under the provisions of said Special Act, will appear from the following statement:

The plan, Exhibit G, shows Long Sault, Sheek and Barnhardt Islands, the Cornwall Canal and the location of the International Boundary Line with respect to the main channel of the St. Lawrence River. The International Boundary Line is in the main channel on the north side of Long Sault Island. The rapids are principally between Long Sault and Sheek Islands. The main channel, south of Barnhart Island, is entirely within American territory and is completely free from rapids. About 95% of the volume of water in the St. Lawrence River flows in this main channel. The other 5% flows through Little River and through the Cornwall Canal, which is shown on said plan. Little River forms the International Channel between Barnhart and Sheek Islands.

A dam, for convenience called the upper dam, is proposed to be erected between the western end of Barnhart Island and the eastern end of Long Sault Island. At each end of this dam next to the shores there will be located a number of large sluice gates the combined discharge of which will be about 100,000 cubic feet per second or 40% of the average flow of water in the river. Another dam, called the lower dam, is proposed to be erected between the easterly end of Barnhart Island and the Canadian shore. It would extend on both sides of the International Boundary. It is proposed to construct both dams of solid concrete masonry and of the gravity type. At the northeasterly end of the lower dam it is proposed to construct a large power house between the dam and the Canadian shore near Lock 20, as shown on plan G. This power house is to be constructed by the St. Lawrence Power Company, Limited, entirely in Canadian territory, and will utilize the water that will be made available at this point by the construction of the dams.

The Long Sault Development Company proposes to construct a power house and lock across the South Sault Channel be-
29 tween the foot of Long Sault Island and the main land. At the easterly end of Barnhart Island it is proposed to construct one, or possibly two power houses and to excavate a head race leading from the forebay immediately by the lower dam to these power houses. In addition to the sluice gates at the upper dam, there will be constructed at each of the power houses a number of larger sluice gates to control the water level above the dams. These will be from thirty-five to fifty feet wide with about fifteen feet depth of water on the sills. They will be so constructed that they can be operated throughout the entire year. All important masonry structures will rest on a solid bed of limestone, and a method of construction will be adopted such as will secure complete safety.

The entire scheme described in this petition, as an engineering proposition, has been approved by engineers of eminence and of special experience in problems of the kind involved. It is their opinion that the proposed foundations and structures will secure unusual stability and absolute safety, and that the nature of the river

generally is such that no loss of life or damage to property would follow a failure of the dams.

The width of the Little River generally will be increased from about 400 feet to about 1,000 feet and provide a straight, wide and deep channel for conveying water to the power houses near the lower dam.

The Long Sault Rapids are navigated by only one line of passenger boats. Only one of those boats, which is specially designed for the purpose, makes a trip daily down stream during the summer tourist season, June to September inclusive. No rafts or freight steamers or other vessels of commerce use or can safely use the main channel on the north side of the eastern end of Long Sault Island, and no boats whatever can go up this channel. The proposed improvement will completely eliminate all rapids above the upper dam. Eastbound passenger steamers will meet a delay of about thirty minutes by using the South Sault lock as compared to shooting the Long Sault Rapids. On the westbound trip they
30 will save at least two hours' time as compared to passage through the Cornwall Canal, so that on a round trip they will save about one and a half hours' time under the proposed conditions. Freight steamers, all of which now use the Cornwall Canal, will be able to save at least four and a half hours' time on each round trip by using the South Sault Lock.

The distance from Lake Ontario to the Eastern end of Barnhart Island is approximately 100 miles. The fall of the water between said points is about 82 feet, and the fall of the water in the rapids, known as the Long Sault Rapids, from the head to the foot, is 45 feet. At the present time the river is susceptible of passage by steamers downstream only, and by way of the main channel as shown on the plan attached hereto marked Exhibit H (which in general correctly shows what it purports to show) through which 96% of the river passes with a current of about ten miles an hour. The proposed dams will throw approximately 50% of this water into the channel in which the International Boundary Line lies, in which the velocity of the water will be only about two miles an hour, and readily navigable by steamers at full headway. The channel which will thereafter be used will be from 30 to 40 feet deep and will afford excellent facilities for navigation as far as the lock which will be by a single lift and will have the same rise that is now accomplished by six locks in Cornwall Canal. The diversion of half the water from the main channel will reduce the current of the remaining water in that channel to about four or four and a half miles per hour, and hence will be readily navigable up to the point of the lock at the end of Long Sault Island. Two channels, independent of each other and each with its own lock system will therefore be available for use by shipping.

Your petitioner has caused accurate surveys to be made of the entire river from the eastern end of Barnhart Island westwardly covering all possible areas that could be affected by the ponding of the water, and has acquired practically all of Barnhart
31 Island and the eastern half of Long Sault Island, together with the riparian rights around the western end of the island.

It has also acquired over 2,000 acres of land on the main shore extending from a point opposite the eastern end of Barnhart Island upstream to the Massena Canal, and has acquired additional land leading back from the river well above any possible future river level, and your petitioner has also acquired riparian rights along the streams that flow into the St. Lawrence River where there was any possibility of riparian damage being caused. In all your petitioner has acquired about 4,000 acres of land.

A summary of the effect of said works on navigation may briefly be stated as follows: The river which at Long Sault is now practically unnavigable will become navigable for all classes of vessels. Both of the contemplated locks will be continuously operated during the navigation season toll free. Reliable and economical power will be made available within the radius of transmission of electricity from the power houses. New industries will thereby be created. There will be increased quantities of products from manufacturing plants utilizing the power, which products must be distributed by boat or rail.

Fourth. In the organization of your petitioner, the preparation of the aforesaid plans, the acquiring of said lands and riparian rights, payment of taxes and other obligations to the State, and on other matters preparatory to construction work, all in reliance upon the grant of powers made to your petitioner by the Special Act, Chapter 355 of the laws of 1907, your petitioner has spent, up to the present time, over the sum of $750,000. If your petitioner is deprived of the rights, franchises and powers granted by said Special Act, the amount so expended will be entirely lost except such portion of the loss as may be recouped upon a sale of the real estate and riparian rights acquired as aforesaid; but as to such lands there will be a probable loss of not less than fifty per cent of the price paid therefor,
for the reason that they are not now worth for the farming
32 and other purposes for which they were being used when
acquired by your petitioner, more than fifty per cent of the amount paid therefor. Substantially the same loss will be sustained by your petitioner if it fails to obtain the consent of Congress to the construction of said dams, locks and canals as above described. Your petitioner is making diligent efforts to obtain such consent. It has as yet not been obtained, and for that reason no part of said works have been constructed by your petitioner, and no electrical power has been developed. In addition to the said sum of $750,000 your petitioner is informed and verily believes that there has been expended by the St. Lawrnce Power Company, Limited, and by other allied companies of your petitioner for purposes similar to those for which the said sum has been expended by your petitioner, a further sum of $750,000 in reliance upon the consummation of said project contemplated and authorized by the said Special Act.

Fifth. The refusal of the State Treasurer as set forth in Paragraph Second hereof, to receive from your petitioner the said sum of $25,000 due, as above stated, for the year 1912, upon the ground that the said Special Act, Chapter 355 of the Laws of 1907, is in violation of the Constitution of the State of New York and therefore

void, has created a cloud upon the title of your petitioner to all of the rights and properties and franchises vested in it by the provisions of said Act, and by reason of such refusal your petitioner suffers and unless the writ herein prayed for is granted by this Honorable Court, will hereafter suffer irreparable injury on account, among other things, of the following facts, viz:

1. By such refusal of the said Treasurer your petitioner is prevented from paying into the State Treasury an amount due under the provisions of said Special Act, and by Section 4 of said Act, it is provided that in case your petitioner shall fail to make any such payment within sixty days after the same is payable
33 as therein provided, in addition to any other remedies which may exist at law, the rights and privileges granted to your petitioner by said Act may be forfeited.

2. The value of the right conferred upon your petitioner by Section 5 of said Act of selling or conveying all or any portion of its property and assets and the franchises and rights appertaining thereto, has been, and continues to be injuriously affected and greatly reduced. The credit of your petitioner is seriously impaired by such refusal of the State Treasurer and the large investments and expenditures made by your petitioner upon the faith of the grants contained in Chapter 355 of the Laws of 1907, are thereby in danger of being in large measure lost to your petitioner. There is no adequate remedy at law by which it can be compensated for the loss which it will suffer on account of these facts.

3. Your petitioner is informed and verily believes, and therefore alleges, that the State Treasurer refused to receive the $25,000 tendered as aforesaid, and stated that he did so because the said Special Act, Chapter 355 of the Laws of 1907 was unconstitutional and void, in order to aid in procuring the nullification of said Special Act by a repeal thereof by legislative action, whereby your petitioner would be seriously prejudiced for reasons set forth below, in effectively asserting in an appropriate judicial proceeding that said Special Act is constitutional and procuring an adjudication to that effect. The information upon which your petitioner bases its belief in the truth of this allegation is as follows, viz:

(*a*) On or about March 29th, 1912, the Senate of the State of New York adopted the following resolution:

"Whereas, An Act constituting chapter 355 of the Laws of 1907, provides among other things that certain persons therein named shall be a corporation to be designated as the 'Long Sault Development Company'; and

"Whereas, Such act further purports to convey to said corporation valuable and exclusive privileges and rights, and directs
34 the conveyances to said corporation of certain lands belonging to the State under the waters of the St. Lawrence river and referred to in said act; and

"Whereas, It is claimed that said corporation is proceeding under such act to acquire private lands, and to secure the consent of the governments of the United States, and of the Dominion of Canada,

confirming said act and the privileges assumed to be granted thereby; and

"Whereas, It is further claimed that such act is unconstitutional in that it assumes to convey exclusive rights and privileges by special enactment, and further assumes to convey a portion of the forest preserve of the State which by the constitution is made inalienable on the part of the State; be it therefore

"Resolved, That the Attorney-General of the State is hereby requested to transmit to the Senate for its further consideration his written opinion as to whether such act as aforesaid contravenes the constitution of the State in any of the matters herein referred to, or in any other particulars; and if in his judgment it does, what if any present action or proceedings may be brought by the State to ascertain judicially such fact; and that such written opinion be ready for submission on the reconvening of the Senate in the year 1913, or at any time prior thereto if the same shall be convened in extraordinary session and prepared to receive the same."

(*b*) Pursuant to the foregoing resolution, the Attorney General submitted an opinion to the Senate, dated December 30th, 1912, wherein he reported that the said Special Act was unconstitutional upon the following grounds, viz:

"First. It contravenes section 18 of article III of the State Constitution, which provides that the Legislature shall not pass a private or local bill granting to any private corporation, association or individual any exclusive privilege, as contemplated by section 18 of article III, of the Constitution.

Second. It violates section 7 of article VII of the State Constitution, which provides that the lands of the State now owned or hereafter acquired, constituting the Forest Preserve, as now fixed by law, shall be forever kept as wild forest lands, and shall not be leased, sold or exchanged, or taken by any corporation, public or private. The bed of the St. Lawrence river, which, by the act in question, is directed to be conveyed to the Long Sault Development Company, is owned by the State and was so owned at the time the provision of the Constitution was adopted, and was included within the Forest Preserve, as defined by section 100 of chapter 332 of the Laws of 1893, describing the lands included within the State Forest Preserve.

Third. The act in question is a private bill and embraces more than one subject, and is, therefore, in violation of article III, section 16 of the State Constitution, which provides that no private or local bill which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in its title.

Fourth. The act is invalid as being in excess of the powers of the Legislature, in that it provides for the alienation by the State to the Long Sault Development Company of title to the lands in the bed of the St. Lawrence river. The title of the State in these lands is a sovereign right, rather than a proprietary title. It is inconsistent with that right, which must be exercised for the benefit of the whole people, that the title to the bed of a navigable stream should be granted in fee to a private corporation."

36 (c) On or about January 13, 1913, Governor Sulzer sent to the Legislature of the State a message wherein he urged the repeal of Chapter 355 of the Laws of 1907, on the ground that such law was unconstitutional for the reasons stated by the Attorney General as aforesaid. He urged that the Legislature immediately repeal said Special Act.

(d) On the day on which said message was sent to the Legislature, bills were introduced in the Senate and Assembly providing for the repeal of Chapter 355 of the Laws of 1907, for the reason, as specifically stated in said bills, that the said law was unconstitutional. The bill in the Senate has been read twice and ordered printed, and referred to the Committee on Finance, which has favorably reported the same to the Senate. The bill in the Assembly has been read once, and referred to the Committee on Ways and Means. A copy of the bill introduced in the Senate, which is identical with that introduced in the Assembly, is hereto annexed marked Exhibit I.

Under the rules of the Senate, the bill now before it may be brought up for passage at any time, and if passed may be immediately sent to the Assembly. Under the rules of that body it could there be promptly passed and sent to the Governor for signature. As elsewhere appears in this petition the Governor has recommended the immediate repeal of Chapter 355 of the Laws of 1907, as provided for in the aforesaid bill, and if the bill purporting to repeal said act should be enacted into law, your petitioner would be irrevocably injured.

(e) On January 21st and 27th, 1913, as already shown by your petitioner, the State Treasurer refused to receive the payment due to the State under the said Act of incorporation, and stated that he based his refusal upon the advice of the Attorney General that the said Special Act was unconstitutional.

The valuable rights, privileges and franchises granted by said Special Act can be fully enjoyed and the contract and property rights vested in your petitioner by virtue of the provisions thereof and of the facts hereinbefore alleged can only become complete so

37 as to enable your petitioner to carry out the plans above referred to, if and when the Congress of the United States shall give its authority to construct said dam, locks, and any other of works which may affect in any manner the navigability of said St. Lawrence River or any part thereof and when the War Department of the Federal Government shall approve the plans for said improvement as required by existing statutes of the United States. Your petitioner is advised and verily believes (1) that if the writ herein prayed for is not granted, the cloud upon the title and rights of your petitioner under said Special Act will have the result of preventing the Congress of the United States from conferring upon your petitioner the said authority and the War Department from so approving said plans, and (2) that, as its rights under said Special Act are to a substantial extent inchoate and dependent upon action by Federal authorities before they become complete, a grave doubt exists as to whether before such action is taken there is any manner in which it may obtain from the courts any adjudication as to the

constitutionality of said Act or any adequate remedy for the determination and protection of its legal and constitutional rights arising thereunder.

The refusal of the State Treasurer to receive the said $25,000 tendered to him by your petitioner on January 21st and 27th, 1913, under the circumstances above set forth, has therefore created a cloud upon, and, unless the writ herein prayed for shall be granted will irreparably injure and impair, the value of the rights and title conferred by and arising under said Special Act; and not only will the corporate rights, franchise, and power conferred thereby be thus injuriously affected, but also special property rights, privileges and franchises granted thereby will be destroyed, and valid contract rights accruing to your petitioner by reason of the obligations and undertakings assumed under said Special Act by the State of New York for a good and valuable and adequate consideration, will be repudiated to the great and irreparable damage of
38 your petitioner.

Sixth. With reference to the statement of the Attorney General that the portion of the bed of the St. Lawrence River which by the provisions of said Act of 1907, may be conveyed to your petitioner by the State is included within the Forest Preserve as defined by Section 100 of Chapter 332 of the Laws of 1893, your petitioner respectfully represents that all of the land surrounding the said portion of the St. Lawrence River is and for more than thirty years has been farming land, under cultivation, settled by farming communities with only such woodlands thereon as have been retained by the farmers to furnish them with a necessary supply of fire wood, and that the nearest forest lands located within the County of St. Lawrence, are situated at a distance of more than twenty-five miles from said portion of the St. Lawrence River, and your petitioner refers to the annexed affidavit of John C. Crasper, verified the seventh day of February, 1913, for a more detailed description of the said portion of St. Lawrence County.

Seventh. In order to preserve the property rights of your petitioner from irreparable injury and for reasons already set forth in this petition, it is essential that the relief prayed for herein should be granted your petitioner at the earliest date consonant with the convenience of the court, and your petitioner therefore asks that an order to show cause may issue returnable at such time as the court may appoint.

No previous application has been made by your petitioner to any court for the relief prayed for herein, nor for any part thereof.

Wherefore, your petitioner prays that a writ of mandamus peremptory or alternative as to the court may seem proper, shall issue out of and under the seal of this court, directed to John J. Kennedy, as Treasurer of the State of New York requiring the said
39 Treasurer to receive and accept from the within named petitioner as a payment into the Treasury of the State of New York, the sum of $25,000, as the sum due and payable by said Long Sault Development Company to the State of New York for the year 1912, under the provisions of Chapter 355 of the Laws of 1907 of

said State, and that your petitioner may have such other and further relief as may seem just, together with the costs of this proceeding.

LONG SAULT DEVELOPMENT COMPANY,
By ARTHUR V. DAVIS, *President, Petitioner.*

STATE OF NEW YORK,
County of New York ss:

Arthur V. Davis being duly sworn, deposes and says: that he is the President of the Long Sault Development Company, the petitioner above named; that he has read the foregoing petition subscribed by him as such president, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he *he* believes it to be true. That the reason why this verification is not made by petitioner is that said petitioner is a corporation and that deponent is an officer and agent of said corporation familiar with the matters referred to therein, and personally has had charge thereof in behalf of said petitioner.

ARTHUR V. DAVIS.

Sworn to before me this 8th day of February, 1913.
[SEAL.] JOHN J. GALLAGHER,
Notary Public (*No.* 153), *New York County,*
Register No. 3170.

40 EXHIBIT A.

Senate, No. 1678.

Chap. 355.

An Act

To incorporate the Long Sault development company, and to authorize said company to construct and maintain dams, canals, power-houses and locks at or near Long Sault island, for the purpose of improving the navigation of the St. Lawrence river and developing power from the waters thereof, and to construct and maintain a bridge, and carry on the manufacture of commodities.

Became a law May 23, 1907, with the approval of the Governor. Passed by a two-thirds vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Michael H. Flaherty, Frank S. Smith, Henry H. Warren, Walter F. Wilson and John C. Casper, and all such persons as are or may hereafter be associated with them, and their successors, are hereby constituted a body corporate and politic by the name and style of the "Long Sault Development Company," for the purpose

of erecting, constructing, maintaining, operating and using, in connection with the Saint Lawrence river, a dam or dams, a canal or canals, a reservoir or reservoirs, and a power-house or power-houses and works appurtenant thereto, at or near Long Sault island, in the county of Saint Lawrence, and of erecting a lock or locks, and works appurtenant thereto, at or near the same place, or for the development of electrical power and energy, and the permanent improvement of navigation on the Saint Lawrence river at and above and below said place; and also of constructing and maintaining a bridge upon or in connection with said works, and of carrying on the
41 manufacture of commodities with the said power.

§ 2. Said corporation shall have power:

(1) to have perpetual succession;

(2) To have a common seal and alter the same at pleasure;

(3) To acquire, by grant, gift, purchase, devise, bequest or other lawful means, and to hold and dispose of such property as its purpose shall require, subject to such limitations as may be prescribed by law;

(4) To appoint such officers and agents as its business shall require, and to fix their compensation;

(5) To make by-laws not inconsistent with any existing law, for the management of its property, the regulation of its affairs, the transfer of its stock, and the calling of meetings of its members;

(6) To borrow money and contract debts, when necessary, for the transaction of its business or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations or of any debt contracted for said purpose, subject in all respects to the provisions of section two of the stock corporation law.

(7) Said corporation shall have all the other powers, privileges and franchises now or hereafter conferred by the general stock and business corporations laws of the state of New York.

§ 3. Said corporation shall have the right to erect, construct, maintain, operate and use all such dam or dams, canal or canals, reservoir or reservoirs, gates, sluices, trunks, pipes, bulkheads, piers, flumes, abutments, and other works appurtenant thereto, as may be proper or useful for the purpose of the development of water power, and of electrical power and energy therefrom, at such point or points upon or adjacent to the south shore of the Saint Lawrence river, near Long Sault islands or Barnhart's island, and upon the said islands, or either of them, and between said islands, and be-
42 tween said islands or either of them and the shores of the said river and Sheik's island (but not across the international boundary line unless consented to by the Dominion of Canada), as may be selected by said corporation, and also in and upon so much of the said river and the bed thereof as lies to the south of the international boundary line, at or near Long Sault island or Barnhart's island, either independently or in connection with like works now erected, or to be erected in so much of said river and the bed thereof as lies to the north or Canadian side of said international boundary

line, and upon and adjacent to the northerly shore of said river; and to erect, construct, maintain, operate and use a power-house or power-houses and conductors, cables, wires, insulators and other appliances in connection with the said works for the development of electrical power and energy; and also to take and use the waters of said river at and above the points of location of said works heretofore authorized, and to construct and maintain upon, over and in connection with said dam or dams and other works, a bridge or bridges across or partly across the Saint Lawrence river, with the approaches thereto, for the use of foot passengers, animals and vehicles, and to charge reasonable rates of toll for passage thereon; the said rights being granted upon the express condition that said corporation shall make just compensation to all persons injured by the exercise of the rights and privileges heretofore granted, and that said corporation shall also erect and construct a lock or locks as may be required by the United States of America, and shall provide electrical power or energy for the maintenance, operation and use of said lock or locks, free of charge, and shall in all other respects perform, fulfill and abide by all and singular the conditions and provisions of this act, and also of any act of the congress of the United States relating thereto, and also upon condition that the rights hereby granted shall never be so used as to impair or obstruct the navigation of the Saint Lawrence river, but on the contrary, that such navigation shall be preserved in as good condition as, if not better than
43 the same is it at present, regard being always had to the amount of the natural flow of water in said river as affecting its navigability from time to time.

§ 4. After the congress of the United States shall authorize the construction of dams, locks and canals hereby authorized and after the payment by said corporation into the treasury of the state of the fixed sum of ten thousand dollars, the commissioners of the land office shall, upon application of said corporation, grant unto it the title and interest of the people of the state in and to lands under the waters of the Saint Lawrence river to be covered or occupied by said works and locks and power-houses, provided, however, that any of the lands of the state which may be so conveyed to said corporation shall be forfeited and title thereto shall revert to the State unless the same are actually used by said corporation and covered by its dams, canals, reservoirs, gates, sluices, trunks, pipes, bulkheads, piers, flumes, abutments or other works appertaining thereto, or are necessary to the enjoyment for said purposes of any lands so used or covered, within fifteen years from the conveyance thereof by the commissioners of the land office to said corporation under authority of this act, and in consideration of the conveyance so made under the authority of this act, as well as for the rights and privileges hereby granted, the said corporation, in addition to the payment aforesaid, shall pay into the treasury of the state for the year nineteen hundred and ten the fixed sum of fifteen thousand dollars, and for the year nineteen hundred and eleven the fixed sum of twenty thousand dollars. For each year after nineteen hundred and eleven the said corporation shall pay at the following rates upon the average amount of electrical horse power generated during such year under

the authority of this act that is to say: Upon all amounts up to twenty-five thousand electrical horse power, at the rate of seventy-five cents per horse power;

Upon all amounts in excess of twenty-five thousand electrical horse power and up to one hundred thousand electrical horse power, at the rate of fifty cents per horse power; upon all amounts in excess of one hundred thousand electrical horse power, at the rate of twenty-five cents per horse power. In case said corporation shall generate or develop water power as mechanical power, without transmuting the same into electrical power, then for so much of said water power as shall be so generated or developed, payment shall be made at the above mentioned rates per mechanical horse power.

In determining the average amount of electrical horse power generated and the average amount of mechanical horse power generated or developed in any year, for the purpose of determining the amount to be paid to the state, no day nor hour during which the works of said company are not in substantial operation shall be included in the total time for which such average is to be determined as the average for the year. In case the amount which would be payable at the rates aforesaid for either of the years, nineteen hundred and ten or nineteen hundred and eleven, upon the average amount of power generated during such year shall exceed the fixed sum hereinbefore required to be paid for such year, the said corporation shall also pay the amount of any such excess; and if for any year after nineteen hundred and eleven the amount payable at rates aforesaid is less than twenty-five thousand dollars, then said corporation shall pay for such year the sum of twenty-five thousand dollars instead of the amount that would be payable at the rates aforesaid. Said amounts for each year shall be payable on or before the first day of February in the following year, and within ten days before the same shall become payable the said corporation shall deliver to the state engineer and to the state treasurer a verified statement showing the average amount of electrical horse power generated, and the average amount of mechanical horse power generated and not transmuted into electrical horse power, by said corporation under the authority hereby granted, during the year ending on the thirty-first day of December next preceding the date of making such statement. The books or other records of said corporation, showing the amount of power so generated, and its works and plant shall at all times be open to inspection and examination by the state engineer for the purpose of verifying or disputing the correctness of any such statement.

The state engineer may prescribe the form of records to be kept by said corporation, and the character of measuring instruments and devices to be used and a reasonable standard of the accuracy thereof and the methods by which said accuracy is to be determined. Said corporation shall keep such records and shall provide and use such instruments and devices and have the same tested accordingly.

If any dispute shall arise in respect to the amount payable for

any year at the rates aforesaid the court of claims shall have jurisdiction to hear and determine the same.

In case the said corporation shall fail to pay any amount due hereunder within sixty days after the same is payable as herein provided, in addition to any other remedies which may exist by law, the rights and privileges hereby granted may be forfeited.

The payments above specified are based upon the assumption that the said corporation under the authority of this act, subject only to the lawful control of the United States Government, may use for the purposes herein specified, at the places herein mentioned, all of the waters of the St. Lawrence river south of the international boundary line, but in case said corporation shall at any time be compelled to make any payment to the Dominion of Canada or the Province of Ontario for the use by said corporation of any portion of said water to generate power as authorized by this act, said corporation shall be entitled to an equitable readjustment of the rate of compensation to be paid to the state for that portion of the said water for the use of which said corporation shall be compelled to make payment to said dominion or province.

46 Such readjustment shall be made by arbitrators, one of whom shall be appointed by the said corporation and one by the governor of the state within thirty days after the receipt by him of written notice of such appointment by said corporation, and in case of their failure to agree the two said arbitrators shall choose an umpire. The decision of the arbitrators, or of the umpire, shall be made in writing, in duplicate, one copy shall be filed with the state treasurer and one delivered to the said corporation; such decision shall be final and binding on both parties, and from and after a date to be fixed therein, payments shall be made in accordance therewith, and pending such decision payments shall be made for each year at the rates aforesaid.

§5. Said corporation may at any time, with the consent of the holders of at least two-thirds in amount of its capital stock at the time outstanding, given in writing or at a meeting of such stockholders duly called for that purpose, sell or convey all or any portion of its property and assets, and the franchises and rights appurtenant thereto, upon such terms as may be consented to as aforseaid, but subject always to the conditions and provisions of this act.

§6. The existence of said corporation shall be perpetual.

§7. The capital of said corporation shall be one million dollars, divided into ten thousand shares of the par value of one hundred dollars each; but said corporation shall not begin business until two hundred and fifty thousand dollars, par value, of the capital stock shall have been actually subscribed and paid for in cash, nor until the organization tax provided by the general laws of the state of New York shall have been paid to the state treasurer; and upon any increase of said capital stock such tax upon such increase shall also be paid.

§8. The number of directors of said corporation shall be five. Said directors shall hold office for the term of one year after their

election and until their successors are elected and qualified.
47 Michael H. Flaherty, Frank S. Smith, Henry H. Warren, Walter F. Wilson and John C. Crapser shall be the directors of said corporation for the first year and until their successors are elected and qualified. The first election shall be held on the first Monday after the third Thursday of February, in the year nineteen hundred and eight. Any vacancy in the board of directors occurring before the first election shall be filled by vote of the remaining directors. The number of directors may be increased as provided by law.

§9. The said corporation shall begin the work of constructing its dam pursuant hereto within one year after the congress of United States shall authorize the construction of dams, locks and canals hereby authorized, and in case such construction shall not be so begun the grants, rights and privileges hereby granted may be forfeited.

§10. This act, and all the terms, conditions and provisions thereof, shall apply to the successors and assigns of the incorporators named in the first section hereof.

§11. This act shall take effect immediately.

STATE OF NEW YORK,
Office of the Secretary of State, ss:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and the whole of said original law.

Given under my hand and the seal of office of the Secretary of State, at the City of Albany, this seventh day of June in the year one thousand nine hundred and seven.

[Seal of the Secretary of State.]

(Signed) M. A. FITZGERALD,
Second Deputy Secretary of State.

48 Exhibit B.

NEW YORK, January 21st, 1913.

The State Treasurer of the State of New York, Albany, New York.

DEAR SIR: Chapter 355 of the Laws of 1907 incorporating the undersigned Company requires the corporation to pay into the treasury of the State for the year 1912 the fixed sum of $25,000. This payment is required to be made on or before the 1st day of February in the year 1913. In payment of the above amount we beg to hand you herewith New York draft for the sum of $25,000 and request that you send us a suitable receipt therefor.

Section 4 of the said act also requires that on or before the 1st day of February of this year and within ten days before the above amount shall become payable, the corporation shall deliver to the State Engineer and to the State Treasurer a verified statement showing, among other things, the average amount of electrical horse

power generated at the works of the Company. We beg to hand you herewith a verified statement, such as is required by the Act, and we are sending by this mail a duplicate original of this statement to the State Engineer. This statement makes it clear that, as the United States Congress has not yet acted specifically in the case of the Company, authorizing it to construct the contemplated improvement, there are in existence no works which can produce any electrical horse power. Kindly acknowledge receipt of enclosed statement and oblige.

Yours very respectfully,
LONG SAULT DEVELOPMENT COMPANY.
ARTHUR V. DAVIS, *President.*

A. V. D.; F. E. W.

49 EXHIBIT C.

To the State Treasurer of the State of New York:

The Long Sault Development Company, a corporation organized under Chapter 355 of the Laws of New York, pursuant to the provisions of Section 4 of the said Act, hereby certifies and states as follows, viz:

During the year ending on the 31st day of December, 1912, there has not been generated by the Long Sault Development Company under the said Act any electrical horse power at the works which it is authorized under the provisions of said Act to erect at or near Long Sault Island, in the County of St. Lawrence, and more particularly described in the said Act. The failure to generate at said place any such electrical horse power is due to the fact that the Congress of the United States has not yet authorized the construction of the dams, locks and canals authorized by the said Act of the Legislature of the State of New York, and the said dams, locks and canals have not yet been constructed and are not yet capable of producing any electrical horse power.

In witness whereof, the said corporation has caused this statement and certificate to be signed in its name by its President and its corporate seal to be affixed hereto, this 21st day of January, 1913.

LONG SAULT DEVELOPMENT COMPANY,
ARTHUR V. DAVIS, *President.*

STATE OF NEW YORK,
County of New York, ss:

Arthur V. Davis, being duly sworn deposes and says that he has read the foregoing certificate and statement of the Long Sault Development Company and that, in behalf of the said Com-
50 pany and as its President, he signed the same in its name and caused to be affixed thereto its corporate seal, and that the said statement and certificate is in every respect true.

ARTHUR V. DAVIS.

Sworn to before me this 21st day of January, 1913.

____ ____,
Notary Public.

EXHIBIT D.

STATE OF NEW YORK,
State Engineer and Surveyor:

C. K.

ALBANY, January 22, 1913.

J. A. Bensel, State Engineer.

Long Sault Development Company, P. O. Box 219, Pittsburgh, Pa.

GENTLEMEN: I beg to acknowledge the filing in this office of statement relative to the operation of the Long Sault Development Company, this statement having been filed in this office under date of January 21, 1913.

Very truly yours,

(S'g'd) ARNOLD G. CHAPMAN,
Deputy State Engineer.

51 EXHIBIT E.

STATE OF NEW YORK,
Treasurer's Office:

ALBANY, January 22nd, 1913.

John J. Kennedy, Treasurer.
George W. Batten, Deputy Treasurer.

Arthur A. Davis, President Long Sault Development Co., Room 70, 99 John St., New York City.

DEAR SIR: Last evening, after office hours, a messenger left with me your letter of the 21st instant, enclosing—

1st. Cashier's check on the National Bank of Commerce, New York, payable to my order, for $25,000.

2nd. Proposed voucher therefor.

3rd. Statement of development of horse power.

I am advised by the Attorney General to return these papers to you for the reason that the statute, under which they assume to be sent, is unconstitutional and void.

Yours respectfully,

(S'g'd) J. J. KENNEDY,
State Treasurer.

G. W. R./T.
Enclosures.

52 EXHIBIT F.

PITTSBURGH, PA., January 24th, 1913.

Hon. J. J. Kennedy, State Treasurer, Albany, N. Y.

DEAR SIR: I beg to acknowledge receipt of your letter of the 22nd instant with enclosures and note that you return the papers and check referred to for the reason that you are advised by the

Attorney General that the statute under which they were sent is unconstitutional and void.

I respectfully call your attention to the fact that several payments have heretofore been made by this company into the Treasury of the State under the statute in question, and have been accepted and retained by the State without question or suggestion that the statute is unconstitutional; that no court competent to determine the question has declared the statute unconstitutional, and that no legal proceedings have been instituted by the Attorney General to question the constitutionality of the statute. In behalf of the Long Sault Development Company I emphatically protest against any action on your part or on the part of any other officer or department of the State Government purporting to be based upon the ground that the statute incorporating that Company is or that any of its provisions are, unconstitutional, or for any other reason, void.

Chapter 355 of the Laws of 1907 incorporating the Long Sault Development Company, provides that the Company shall pay into the Treasury of the State certain sums of money which for the year 1912 amount to the sum of $25,000. It is enacted in Section 3 of the Finance Law that "The Treasurer shall receive all moneys paid into the Treasury of the State." Concurrently with the delivery of this letter, the Long Sault Development Company, acting under the provisions of said Chapter 355 of the Laws of
53 1907, will again tender to you, in your capacity as State Treasurer, the sum of $25,000 and will deliver and leave with you a verified statement under the provisions of the statute concerning electrical horsepower and mechanical horsepower, for the year ending the 31st day of December, 1912.

Yours very truly,

LONG SAULT DEVELOPMENT COMPANY.
ARTHUR V. DAVIS, *President.*

EXHIBIT F1.

To the State Treasurer of the State of New York:

The Long Sault Development Company, a corporation organized under Chapter 355 of the Laws of New York, pursuant to the provisions of Section 4 of the said Act, hereby certifies and states as follows, viz.:

During the year ending on the 31st day of December, 1912, there has not been generated by the Long Sault Development Company under the said Act any electrical horsepower at the works which it is authorized under the provisions of said Act to erect at or near Long Sault Island, in the County of St. Lawrence, and more particularly described in the said Act. The failure to generate at said place any such electrical horsepower is due to the fact that the Congress of the United States has not yet authorized the construction of the dams, locks and canals authorized by the said Act of the Legislature of the State of New York, and the said dams, locks and canals have not yet been constructed and are not yet capable of producing any electrical horsepower.